Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Creation of a Low Power Radio Service	)	MM Docket No. 99-25

To: The Commission

COMMENTS OF COX RADIO, INC.

Cox Radio, Inc. ("Cox"), by its attorneys, submits herewith its comments in response to the *Second Order on Reconsideration and Further Notice of Proposed Rulemaking* in the above-referenced proceeding proposing certain changes to the Commission's rules governing low power FM (LPFM) radio service, including interference protection by LPFM stations to subsequently authorized full service FM stations and the transferability of LPFM authorizations.[1]

I. Introduction

Cox, either directly or through wholly-owned subsidiaries, owns and operates seventy-eight full service AM and FM radio stations throughout the United States. As the owner of numerous full service stations, Cox has a keen interest in preventing harmful interference to existing broadcast service in its communities.

Many of the full service stations owned by Cox operate on channels second and third adjacent to LPFM stations. In the *Notice*, the Commission requested comment on its rule, 47 C.F.R. § 73.809, governing interference protection by LPFM stations to subsequently authorized full service

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[1] *See Creation of a Low Power Radio Service*, Second Order on Reconsideration and Further Notice of Proposed Rulemaking, MM Docket No. 99-25, FCC 05-75 (rel. March 17, 2005) (the "*Notice*").

stations on co-channel or first-, second-, or third-adjacent channels and specifically whether to limit such interference protection to situations involving co-channel or first- adjacent channel predicted interference.[2] The Commission's proposal surely would result in the loss of primary off-air radio service provided by full service FM stations. Accordingly, the Commission should not adopt its proposal, and any changes to the interference rules adopted by the Commission in this proceeding must be designed to ensure that secondary LPFM services protect all subsequently authorized primary, full service broadcast stations from any harmful interference.

In the *Notice*, the Commission also asked for comment on whether to amend its rules to permit the assignment of LPFM authorizations and transfer of control of LPFM licensees.[3] To ensure the integrity of the non-profit LPFM service and promotion of local service, Cox opposes any rules permitting the assignment of LPFM authorizations. The current rules adequately accommodate transfers of less than a controlling interest or involuntary transfers of control due to, for example, the resignation or death of a principal.

II. LPFM Stations Must Protect All Subsequently Authorized Full Service Stations

Ensuring the effective and efficient use of the electromagnetic spectrum is the Commission's most fundamental responsibility.[4] Congress, in the Communications Act of 1934, as amended,[5] directed the Commission to "make available . . . a rapid, efficient, nation-wide, and world-wide wire and radio communication service. . . ."[6] Under that mandate, the Commission may not abandon

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2 *Id.* at ¶¶ 38-39.

3 *See id.* at ¶¶ 16-20.

4 47 U.S.C. §§ 151, 303(f),(g), 307(b).

5 47 U.S.C. § 151 et. seq.

6 47 U.S.C. § 151.

functional, well-considered rules and policies affecting the electromagnetic spectrum without carefully considering the facts and articulating a rational basis for the changes proposed.[7] Thus, any decision to change or relax the interference rules and standards applicable to FM radio stations must be based on significant cost-benefit and interference studies. At this time, the Commission is not in a position to make the change it is proposing because it lacks a rational basis and will be contrary to longstanding FCC precedent and policy on spectrum use.

The Commission's proposal to relax existing interference protection standards by permitting continued secondary LPFM second- and third-adjacent channel operations over a subsequently authorized upgrade or new primary full service station represents a dramatic departure from longstanding FCC spectrum policy. Over the past twenty years, and based on its concerns over spectrum integrity and efficiency, the Commission consistently has rejected proposals permitting low power FM stations to operate on a primary basis. The Commission has determined time and again that full power FM stations "make more efficient use of the spectrum than . . . [low-power stations] in that the ratio of coverage to interference area is much larger for full-service stations than for low-power [stations]."[8] Accordingly, in 1978, the Commission stopped accepting applications for new low power Class D noncommercial FM stations and required existing facilities to upgrade or move to commercial channels because the Class D stations were "impeding the licensing of more efficient Class B and C stations."[9] In 1990, after an extensive review of FM translator operations, the

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7 "When an agency undertakes to change or depart from existing policies, it must set forth and articulate a reasoned explanation for its departure from prior norms." Telecommunications Research & Action Ctr. v. FCC, 800 F.2d 1181, 1184 (D.C. Cir. 1986).

8 *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations,* Notice of Inquiry, MM Docket No. 88-140, 3 FCC Rcd 3664, ¶ 32 (1988).

9 *Id.*

Commission similarly declined to authorize the operation of FM translators on a primary basis.[10] In 2000, recognizing the much smaller service areas of LPFM stations than full service stations, the Commission found that an LPFM station should not be accorded "an interference protection right that would prevent a full-service station from seeking to modify its transmission facilities or upgrade to a higher service class. Nor should LPFM stations foreclose opportunities to seek new full-service radio stations."[11] The Commission consistently has determined that efficiency requires a maximized coverage to interference ratio and that the existing interference protection standards effectively provide for spectrum efficiency.

The Commission offers little basis – technical or otherwise – that would justify abandoning years of policy and precedent. The Commission's claim that the predicted interference area to the full service station on a second- or third-adjacent channel would be "limited to a small area in the immediate vicinity of the LPFM station transmitter site"[12] undermines rather than helps its argument. Generally the areas of possible interference for short-spaced stations are outlying and beyond core populations. The Commission, however, clearly contemplates that the proposed LPFM stations would operate in densely-populated urban areas (as well as less populated rural areas)[13] such that substantial interference will occur in densely populated areas. Such a result is completely at odds with any notion of efficient spectrum management.

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10 *Amendment of Part 74 of the Commission's Rules Concerning FM Translator Stations*, Report and Order, MM Docket No. 88-140, 5 FCC Rcd 7212 (1990).

11 *Creation of Low Power Radio Service*, Report and Order, MM Docket No. 99-25, 15 FCC Rcd 2205, ¶ 65 (2000) ("*Report and Order*"). *See also Notice* at ¶ 38.

12 *Notice* at ¶ 38.

13 If the Commission perceived that LPFM stations could be economically viable in non-urban areas, it would not be proposing to relax existing interference protections.

Moreover, the Commission's proposal flies in the face of Congress' directive prohibiting the reduction of third-adjacent channel distance separations for LPFM stations,[14] and its own determination to retain second-adjacent channel protection requirements for LPFM stations.[15] As the Commission found then, "in many situations there would be increased interference if 2nd adjacent channel protections were eliminated."[16] In addition, applying second adjacent channel protection requirements to LPFM stations will preserve flexibility for the development of in-band, on-channel (IBOC) digital audio systems for FM stations.[17] In the *Notice*, the Commission has not provided any new information on the second adjacent channel issue that it did not have available and consider in deciding to retain second adjacent channel protections for LPFM service.

But for a brief analysis of the consequences of eliminating the second- and third-adjacent channel protection, there is scant effort in the *Notice* to assess or quantify in any regard the effect of the relaxed standards on existing full power FM stations. In fact, the Commission's proposal would cause interference to a large number of full service stations and have a substantial impact on such stations. If adopted, the proposal would adversely impact Cox's plans for modifications or upgrades to its existing full service stations or proposals for new full service stations. Surrounding full power FM broadcast service areas with smaller LPFM stations on second- and third-adjacent channels would prevent Cox's full service stations from maximizing service or modifying their facilities. As

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14 Pub. L. No. 106-553, § 632, 114 Stat. 2762 (2000) ("The Federal Communications Commission may not. . . eliminate or reduce the minimum distance separations for third-adjacent channels required by paragraph (1)(A) [prescribing LPFM station third-adjacent channel minimum distance separation standards]. . . .").

15 *Creation of Low Power Radio Service*, Memorandum Opinion and Order, MM Docket No. 99-25, 15 FCC Rcd 19208, ¶ 26 (2000).

16 *Id.*

17 *Id.*

such, the Commission's proposal is contrary to one of the Commission's "paramount goals in introducing LPFM service. . . not [to] interfere with existing service."[18]

The Commission appears too willing to accept the risk of interference without fully studying how severe the interference will be. For instance, the Commission does not offer any proposal for roll-outs, testing periods, or other exploratory steps that could be taken to ensure that existing radio stations and their listeners will be protected. If the Commission wishes to relax existing interference protection requirements, Cox urges the Commission to oversee the preparation of a rigorous and extensive study – with participation from interested parties – that would include a technical and cost-benefit analysis.[19] Without such a study, it would be unreasonable for the Commission to alter its interference protection to full service stations.

III. The FCC Should Not Permit the Transfer and/or Assignment of LPFM Authorizations

As indicated above, in the *Notice*, the Commission asked for comment on whether to amend its rules to permit the assignment of LPFM authorizations and transfer of control of LPFM licensees.[20] Cox opposes changes to the Commission's rules to permit the assignment of LPFM authorizations. The Commission established the LPFM service as a noncommercial educational non-profit service to best serve the Commission's goals of "bringing additional diversity to radio broadcasting and serving local community needs in a focused manner."[21] Permitting the assignment of LPFM authorizations would allow the creation of a secondary market where LPFM authorizations can be obtained for profit, contrary to the Commission's goals for the LPFM service.

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18 *Id.* at ¶ 28.

19 *E.g.*, the Commission should quantify proposed service population losses and gains.

20 *See Notice* at ¶¶ 16-20.

21 *Report and Order* at ¶ 17.

The current FCC rule, 47 C.F.R. § 73.865, adequately accommodates circumstances involving transfer of less than a controlling interest or involuntary transfers caused by the resignation or death of a principal. No further changes are necessary.

IV. Conclusion

Cox urges the Commission not to permit the assignment of LPFM authorizations to ensure the integrity of the LPFM service as a non-profit service. Cox also urges the Commission not to relax existing interference protection standards. There simply is no justification for such a radical policy departure. "While agency expertise deserves deference, it deserves deference only when it is exercised; no deference is due when the agency has stopped shy of carefully considering the disputed facts."[22] Agencies are bound to adhere to their own rules and procedures.[23] Moreover, "[t]he Commission's notion of the public interest cannot justify its failure to abide by its own rules and to act in a manner consistent with its own precedents."[24] Hastily abandoning reliable and relied-upon interference protection standards without a rational basis – falls far short of the Commission's

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22 Cities of Carlisle and Neola v. FERC, 741 F.2d 429, 433 (D.C. Cir. 1984)

23 Teleprompter Cable Comm. Corp. v. FCC, 565 F.2d 736, 742 (D.C. Cir. 1977).

24 *Id.*

statutory duty to "make available . . . a rapid, efficient, nation-wide, and world-wide wire and radio communication service. . . ."[25]

Respectfully submitted,

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[25] 47 U.S.C. § 151.